

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE CLOROX CONSUMER) Master File No. 12-00280 SC
LITIGATION)
) ORDER REQUESTING SUPPLEMENTAL
) BRIEFING

This Document Relates To:
ALL ACTIONS

Now before the Court is Plaintiffs' motion to certify five plaintiff sub-classes. ECF No. 99 ("Mot."). Each sub-class is defined by the state in which its members purchased Clorox Fresh Step cat litter -- either California, Texas, New York, Florida, or New Jersey. Plaintiffs allege that Clorox misrepresented Fresh Step's effectiveness relative to other cat litter brands, thereby inducing Plaintiffs to purchase Fresh Step at a higher price. In their initial complaint, Plaintiffs brought claims under California law only. ECF No. 1. Plaintiffs have since amended their complaint twice. Both the second and third amended complaints state Plaintiffs' contention that all five sub-classes should be certified under California law. ECF Nos. 29 ("SAC") ¶ 68; 93 ("TAC") ¶ 74. In the event that the Court were to conclude that

1 California law does not apply to all five sub-classes, the second
2 and third amended complaints include alternative claims under the
3 laws of Florida, Texas, New York, and New Jersey. SAC ¶¶ 96-156;
4 TAC ¶¶ 102-62. Both amended complaints also argue in that, if the
5 Court were to find that California law does not apply to all
6 claims, the sub-classes should be certified under the laws of their
7 respective states. SAC ¶ 69; TAC ¶ 75.

8 Plaintiffs' motion to certify refers only to the sub-classes.
9 It requests certification for each sub-class under the law of its
10 respective state. Mot. at 1, 7-14. However, the third amended
11 complaint, which reasserts Plaintiffs' argument that all claims
12 should be governed by California law, was filed after the motion to
13 certify was submitted under seal. Additionally, Plaintiffs argue
14 in their reply that they are entitled to a presumption that every
15 member of the proposed classes relied on Clorox's alleged
16 misrepresentations. That presumption, according to Plaintiffs, is
17 grounded in California law. ECF No. 115-4 ("Reply") at 9-10.
18 There is no discussion of whether or why such a presumption should
19 apply to the sub-classes from other states if California law does
20 not apply.

21 The Court hereby requests additional briefing on these issues.
22 Plaintiffs shall file a single supplemental brief on this matter,
23 not to exceed ten (10) pages, no later than fourteen (14) days
24 after the signature date of this Order, that

25 (1) specifies whether or not Plaintiffs contend that
26 California law governs the claims of members of all five
27 proposed sub-classes;

28 (2) explains the legal basis for that position; and

(3) discusses application of the class-wide presumption of reliance under the laws of New York, New Jersey, Texas, and Florida (either primarily if Plaintiffs seek certification under the law of each state or in the alternative if they seek certification under California law).

Clorox may file a single supplemental brief, also not to exceed ten (10) pages, no later than fourteen (14) days after Plaintiffs' supplemental brief is filed.

IT IS SO ORDERED.

Dated: July 3, 2014


UNITED STATES DISTRICT JUDGE